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C-475-827
Sunset Review
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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate from Italy: Final Results

Summary

We have analyzed the substantive responses of the interested parties in the sunset review of the countervailing duty order covering certain cut-to-length carbon-quality steel plate from Italy. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of a countervailable subsidy
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

History of the Order

The Department of Commerce ("the Department") published its final affirmative countervailing duty determination on certain cut-to-length carbon-quality steel plate ("CTL Plate") from Italy in the Federal Register on December 29, 1999. See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Italy, 64 FR 73,244 (December 29, 1999) ("Final Determination"). In the final determination the Department found an estimated net subsidy for ILVA S.p.A. (" ILVA") of 26.12 percent ad valorem, a de minimis rate for Palini & Bertoli, thus excluding it from the order, and an estimated net subsidy for all other manufacturers/producers/exporters ("All Others") of 26.12 percent ad valorem.

The final results have been subject to challenge in both the World Trade Organization ("WTO") and United States Court of International Trade ("CIT"). The Department's privatization methodology was at issue in both challenges. Responding to an adverse decision by the WTO Dispute Settlement Body, the Department conducted a Section 129 proceeding in which it applied a new privatization methodology that resulted in a recalculated rate of 3.44 percent ad valorem for ILVA and "All Others" . See Notice of Implementation under Section 129 of the Uruguay Round Agreements Act; Countervailing Measure Concerning Certain Steel Products from the European Communities, 68 FR 64858 (November 17, 2003) ("Section 129").

During the challenge before the CIT, the Department completed several remand determinations pursuant to the court's instructions. In the Department's Second Redetermination pursuant to the court's instruction, the Department found that the privatization sale extinguished all nonrecurring benefits paid to ILVA prior to the privatization sale. Results of Redetermination Pursuant to Court Remand: ILVA Lamiere e Tubi S.r.L. and ILVA S.p.A. v. United States, Court No. 00-03-00127, Remand Order (CIT, March 29, 2002) ("Second Redetermination"). The Department then removed all nonrecurring subsidies found in the initial investigation that conferred benefits on ILVA prior to the privatization, resulting in a recalculated rate of 3.44 percent.

The CIT then issued another remand instructing the Department to remove early retirement benefits paid under Law 451/94 to employees retiring prior to the sale of ILVA. ILVA Lamiere vs. United States, 283 F.Supp. 2d 1320 (2003). On August 28, 2003, the Department issued its Third Redetermination, where it complied with the court's instruction, and found that payments made to employees under Law 451/94 that retired prior to the privatization of pre-sale ILVA are not countervailable subsidies. See Results of Redetermination Pursuant to Court Remand: ILVA Lamiere e Tubi S.r.L. and ILVA S.p.A., Court No. 00-03-00127, Remand Order (CIT, July 29, 2003) (August 28, 2003) (Third Redetermination). In complying with the CIT's instructions, the Department removed from ILVA's benefit calculation retirement payments to employees that retired prior to April 28, 1995, under Law 451/94. As a result, the Department determined the rate of countervailable subsidy for early retirement benefits under Law 451/94 for payments made after April 28, 1995, to be 1.07 percent. Thus, the Department calculated a cash deposit rate of 2.45 percent ad valorem for ILVA and "All Others". On March 26, 2004, the CIT affirmed the Department's remand redeterminations. ILVA Lamiere V. United States, 2004 Ct. Int'l Trade Lexis 32; Slip. Op. 2004-29 (March 26, 2004). On February 10, 2005, the Court of Appeals for the Federal Circuit ("CAFC") affirmed the CIT's decision. ILVA Lamiere v. United States, Court of Appeals for the Federal Circuit, Court No. 04-1415 (February 20, 2005). For further discussion on this program, see below at "*Retirement benefits under Law 451/94*."

Outside of the Section 129 proceeding and the remand redeterminations directed by the CIT, the Department has not conducted an administrative review. Therefore, it is reasonable to determine that those programs not affected by ILVA's privatization continue to exist. As established in the investigation and not reviewed in either of the court challenges or in the Section 129 proceeding, the following programs conferred benefits to manufacturers/producers/exporters of CTL Plate from Italy: exchange rate guarantees, retirement benefits under Law 451/94 and ESCS Article 54 loans.

Sunset Review Background

On March 23, 2005, the Department determined that ILVA's exports did not account for the 50-percent threshold, thereby finding that its response was inadequate. See March 23, 2005, Memorandum for Ronald K. Lorentzen through Kelly Parkhill from Hilary E. Sadler, Subject: Carbon-Quality Steel Plate from Italy: Determination of Adequacy of Response. Based on this finding, the Department concluded that since the response was inadequate, the Department would conduct an expedited review. Id.

Discussion of Issues

In accordance with section 751(c)(1) of the Tariff Act of 1930, as amended ("the Act"), the Department is conducting this review to determine whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the programs which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("the ITC") the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("SCM").

Below we address the substantive responses of the interested parties.

1. Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

In their substantive response, domestic interested parties argue that revocation of the countervailing duty order on CTL Plate from Italy would result in the continuation or recurrence of a countervailable subsidy. They cite the Final Determination where the Department found that Italian producers received countervailable subsidies from equity infusions, debt forgiveness, capital grants, early retirement benefits, tax exemption, exchange rate guarantees and ECSC loans. See 64 FR at 73248-56. Domestic interested parties claim that after the Department changed its privatization methodology, the following programs remained countervailable: early retirement, exemptions from taxes, exchange rate guarantees and ESCS loans.

Interested domestic parties cite the Department's Sunset Policy Bulletin[1] and section 752(b)(1) of the Act, which states that in making a determination the Department will consider whether revocation of a countervailable order is likely to lead to continuation or recurrence of a countervailable subsidy. In evaluating likelihood, they claim the Department must consider the net subsidy rates from the investigation and any subsequent reviews as well as whether any change in the programs at issue have occurred that are likely to affect the net countervailable subsidy rate. Based on these criteria, domestic interested parties note that there has been no administrative review that would provide evidence upon which to determine whether any changes in the programs have occurred that are likely to affect the net countervailable subsidy rate.

In addition, domestic interested parties claim that two of the four programs have been analyzed in the context of full sunset reviews on other products from Italy. The early retirement benefit program under law 451/94 and the ESCS loans under Article 54 were found to continue to confer a benefit in the full sunset review on stainless steel wire rod from Italy. See Stainless Steel Wire Rod from Italy: Final Results of Full Sunset Review of Countervailing Duty Order, 69 FR 40354 (July 2, 2004) ("Stainless Steel Wire Rod from Italy"), and Accompanying Issues and Decision Memorandum at page 6. Therefore, domestic interested parties argue that the Department, in accordance with the Sunset Policy Bulletin, should determine that revocation of the countervailable duty order is likely to lead to continuation or recurrence of countervailable subsidies because there is no evidence that subsidy programs have been terminated.

The European Community ("EC") and the Government of Italy ("GOI") state that they do not foresee any negative impact from revocation of the order; rather, previous investigations have demonstrated that the Italian steel sector, including such producers of CTL Plate as ILVA, no longer benefit from any new subsidies. Moreover, the EC and the GOI claim that there is no likelihood that the situation will change in the foreseeable future. Additionally, the EC asserts that the Department is already aware from past investigations that the Italian steel sector was fully restructured. The EC also asserts that it carefully monitored this restructuring and, as a result, the Italian steel producers are now fully privately owned and compete on commercial terms. Also, the EC claims that any possible termination of the order would not impact the EC's policy on aid to the steel sector. The EC argues that the subsidization of the steel sector in the EU is practically prohibited following the adoption of a series of EC Decisions under the Community Steel Aid Code.

The EC makes three points in its argument that there is no likelihood of continuation of subsidization. The EC claims that the Department should find a recalculated subsidy rate of 1.6 percent rather than the current 3.44 percent. The EC purports that the Commission Decision 2496/96 of December 18, 1996 ("CD"), which was recently updated as the "Multilateral Steel Framework ("MSF"), closely defines the exceptions and prohibitions of granting aid to the steel industry. First, the EC notes that aid is only allowed in three distinct circumstances: closing of facilities, environmental aid, and research and development assistance. Before any aid is given,

[1] Policies Regarding the Conduct of Five-year ("Sunset" Reviews of Antidumping and Countervailing Duty Order; Policy Bulletin, 63 FR 18871 and 18874 (April 16, 1998) ("Sunset Policy Bulletin").

the EC must first approve it by following the procedures laid out in the CD. Moreover, the EC claims that the Department is well aware that members of the privately owned steel industry have not received any substantial assistance since 1992. Second, the EC argues that ILVA did not benefit from pre-privatization subsidies. The EC claims that all of the subsidies found in the original investigation were granted to ILVA's predecessor. Since the privatization, ILVA operates on the basis of private, non-subsidized capital. In addition, the financial assistance provided to ILVA is negligible. The EC asserts that ILVA has neither benefitted from the aid granted to the previous state-owned ILVA (i.e., the old ILVA) nor has privatized ILVA (i.e., the new ILVA) received any new aid. Third, the EC argues that most of the programs found to be countervailable during the investigation have been terminated. Specifically, the EC argues that Article 54 ECSC loans are no longer available or have been substantially changed such that they are no longer specific. As support, the EC states that the ECSC Treaty expired on July 27, 2002, and no new loans were granted after 1998.

The GOI also provided a list and comments on programs that they claim were terminated prior to this sunset review.

> *Law 796/76: Exchange Rate Guarantee*: The Department found Law 796/76: Exchange Rate Guarantee to confer a benefit of 0.07 percent to ILVA. The GOI sates that this law was terminated on July 10, 1992, by Decree Law 333/92 and is therefore no longer available to the Italian steel industry. The GOI also claims that the Department recognized that it was terminated in the original investigation. See Final Determination, 64 FR at 73255. The GOI further notes that Law 796/76 was linked to exchange risks of the Article 54 ESCS loans, and that the last ECSC Article 54 loans to ILVA were repaid in 1998 and 1999. Therefore, the GOI asserts that the Department should find that this law/program was terminated and is not likely to be reinstated.

> *Retirement benefits under Law 451/94*: The Department found Pre-Privatization Retirement benefits under Law 451/94to confer a benefit. The CIT determined that payments made to employees who retired from post-sale ILVA after April 28, 1995, were countervailable. In complying with the court's remand, the Department found that Law 451/94 conferred a benefit of 1.07 percent to ILVA. The GOI asserts that during the investigation the Department found that Article 8 of Law 451/94 was only effective for three years from 1994 through 1996. It argues that, by the time of the investigation (1999), the whole process of early retirement of former ILVA workers was already completed. In addition, the GOI provided information on the number of workers that continue to receive benefits under this law, and it recalculated the benefit for this program. See Annex 1 of the GOI's response. The GOI requests that the Department find that this law was terminated in 1996, and any outstanding countervailable benefits are de minimis, and there is no likelihood that this program will be reinstated.

> *ESCS Article 54 Loans*: In the original investigation, the Department found that ESCS Article 54 loans conferred a 0.02 percent benefit to ILVA. The GOI reiterates that ILVA's ESCS loans were fully repaid before the initiation of the current sunset review and that there is no likelihood that they would be reinstated, as the ECSC Treaty expired

in 2002. The GOI states that "It was terminated by the natural expiry of its constitutive treaty (the Treaty of Paris) signed in 1952 and having a duration of 50 years (not extendable)." The GOI therefore claims that this program has been terminated.

Department's Position

There have been no administrative reviews conducted for this order. Though respondent interested parties have submitted evidence to the Department that some of the programs found to be countervailable in the investigation have been terminated, we disagree with the contention that all of the discussed programs above were terminated. Consistent with the CIT's determinations, we find that early retirement payments made to employees that retired prior to the privatization of ILVA are not countervailable. However, with respect to the early retirement payments made to employees that retired after April 28, 1995, made pursuant to law 451/94, we find that the program continues to provide countervailable benefits. As acknowledged in the GOI's response, there are still employees receiving benefits under this program.

While respondent interested parties argue that ECSC Article 54 loans have been terminated, we find that the evidence they presented in their response did not demonstrate that the policy behind the loans has been terminated. Further, as we have not conducted an administrative review, we find it reasonable to view this program as providing countervailable benefits. Furthermore, the Department determined in the sunset review of stainless steel wire rod from Italy, that this program continues to exist and has potential to provide countervailable benefits were the order to be revoked. See Stainless Steel Wire Rod from Italy, 69 FR at 40354.

We disagree with domestic interested parties and find that Law 796/76: Exchange Rate Guarantees has been terminated. In the Final Determination, the Department found that "[t]his program was terminated effective July 10, 1992 by Decree Law 333/92." See 64 FR at 73255. This program was tied to two outstanding loans. Respondent interested parties provided in their responses evidence that these loans were repaid. See February 1, 2005, response at Annex 1. Moreover, in Stainless Steel Wire Rod from Italy, we found that this program would not likely continue or recur if the order were revoked. We, therefore, find that this program and its benefits have been terminated.

As evidence on the record demonstrates that certain programs may continue to provide a benefit, the Department therefore finds it reasonable to assume that the continued use of a program is highly probative of the likelihood of continuation or recurrence of countervailable subsidies if the order were revoked.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

The domestic interested parties, citing the Sunset Policy Bulletin, note that the Department has specific and limited circumstances in which it might make adjustments to the net countervailable subsidy from the original investigation. See Sunset Policy Bulletin, 63 FR

18875. Furthermore, "where the Department has not conducted an administrative review of the order . . . subsequent to the investigation . . . the Department normally will not make adjustments to the net countervailable subsidy rate determined in the original investigation. Id at 18876. Domestic interested parties note that there have not been any administrative reviews with the exception of the Section 129 review. In accordance with the SAA and the Sunset Policy Bulletin, domestic interested parties assert that the Department has no basis to select any other rate or to make any adjustments to the rates from the Final Determination. Therefore, domestic interested parties claim that the rate found in the Section 129 determination will likely prevail if the suspended investigation is terminated. See Domestic interested parties' February 1, 2005, substantive response at 8.

The GOI notes that certain programs have been terminated or are no longer providing benefits and that the Department should recalculate the net subsidy rate. The GOI provided an updated list of programs in its February 2, 2005, response at Annex 1. Specifically, the GOI provided a list of the programs found to confer subsidies during the investigation and Section 129 determination. In the original investigation the Department determined that ILVA benefitted from equity infusions at a rate of 3.07 percent; debt forgiveness: 1981 restructuring plan of 1.09 percent; debit forgiveness: 1988 restructuring plan of 5.12 percent; debt forgiveness: 1993-1994 restructuring plan ILVA (old) to ILP of 13.27 percent. The GOI points out that these program rates were later adjusted to zero during the Section 129 determination.

ILVA reiterates the GOI's statement that most of the programs found countervailable in the investigation have been terminated. ILVA notes that as a result of the restructuring of the Italian steel industry the producers of CTL Plate do not benefit from aid granted to the previously state-owned companies or from any other kind of financial assistance. ILVA states that the only program under which any benefit could be attributed is under Pre-Privatization Retirement benefits under Law 451/94 and contends that the residual amount of any such benefit is de minimis. See GOI response.

ILVA points out that in the Section 129 determination, ILVA's rate was reduced to 3.44 percent, and that this rate should be further reduced because of the recent changes in the programs previously found to be countervailable. See above description of the programs.

Department's Position

As noted above, the Department has not conducted an administrative review of this order. While it is the Department's practice to use rates established during the investigation, we find that the net subsidy rate of 26.12 percent is inaccurate. In the Section 129 Proceeding, the Department modified the rate to 3.44 percent and then further modified it under the direction of the CIT and the CAFC to 2.45 percent.

Based on information readily available, discussed in the Final Determination, and discussed in the "Continuation or Recurrence of a Countervailable Subsidy" section above, we find that Law 796/76: Exchange Rate Guarantee was terminated prior to the sunset review and will not be reinstated. Therefore, we are recalculating the net countervailing subsidy that would likely prevail if the order were revoked. We determine that the new net countervailing duty subsidy that would prevail if the order were revoked is 2.38 percent ad valorem[2]. This rate is for ILVA and "All Others" for producers and exporters that did not participate in the investigation.

3. Nature of the Subsidy

In the Sunset Policy Bulletin, the Department states that, consistent with section 752(a)(6) of the Act, the Department will provide to the ITC information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the SCM. None of the programs at issue is a subsidy described in Article 3 of the SCM. Also, our review of the determinations on the record does not lead us to conclude that the programs in this proceeding fall within the definition of a subsidy under Article 6.1. We note that as of January 1, 2000, Article 6.1 has ceased to apply (see Article 31 of the SCM). The subsidy programs are described below:

Early Retirement Benefits Law 451/94: This law enabled the Italian steel industry to implement workforce reductions by allowing steel workers to retire early. Benefits under this program are provided until the employee reaches his/her natural retirement age, up to a maximum of ten years.

ECSC Article 54 Loans: The Department found that Article 54 of the 1951 ECSC Treaty provided industrial investment loans directly to iron and steel industries to finance modernization and purchase of new equipment.

Exemption from taxes: The Department found that pursuant to this law, firms were exempted from paying profit taxes. Companies are eligible for full exemption of tax on profits arising from projects in the Mezzogiorno and less developed regions of center-north Italy.

Final Results of Review

We determine that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Manufacturer/Exporter	Margin (percent)
ILVA S.p.A.	2.38
Palini & Bertoli	de minimis
All Others	2.38

[2] As our starting point, we used the rate established for ILVA in Third Redetermination.

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish in the final results of review in the Federal Register.

AGREE: _____ DISAGREE: _____

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Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

____
(Date)